



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MRA - 178406

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 8, 2016, under Wis. Stat. § 49.45(5), to review a decision by the La Crosse County Dept. of Human Services regarding Medical Assistance (MA), a hearing was held on January 11, 2017, by telephone.

The issue for determination is whether an Individual Retirement Annuity is an available asset.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
La Crosse County Dept. of Human Services  
PO Box 4002  
La Crosse, WI 54601

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. Petitioner has resided in a nursing home since 2015. Her husband remains in the community.

3. In September, 2016, petitioner's husband, through their attorney, requested that the county agency do an asset assessment under the Spousal Impoverishment provisions of Wis. Stat., §49.455(5)(a) as part of a nursing home MA application. The agency determined that total assets were some \$520,000, with \$414,000 of that amount owned by petitioner's husband. Included in petitioner's husband's assets was a Jackson National Life retirement account valued at \$217,321. Exhibit 3, line 13.
4. This appeal was filed under Wis. Stat., §49.455(8)(a)4, to review the attribution of resources to the institutionalized spouse.
5. The Jackson National Life account is an annuity in the pay-out stage that originated as an Individual Retirement Account (IRA) of petitioner's husband dating to his former employment. In 2006 petitioner's husband made a direct rollover of the IRA to the Individual Retirement Annuity. See attachment to Exhibit 6, which is [REDACTED]'s November 18, 2016 letter to the county agency. The annuity currently pays out \$1,250 monthly. It is uncertain, but likely, that the annuity can be cashed in because the statement includes a cash surrender value. See Exhibit 1, which is the June 29, 2015 Jackson National Life statement.

### **DISCUSSION**

The issue in this case is whether the Jackson National Life annuity is an exempt asset under MA rules. There are two competing citations. §16.7.4.1 of the MA Eligibility Handbook provides that annuities purchased after March 1, 2004 are considered to be available assets if they can be surrendered for a cash value. However, §16.7.20 of the Handbook provides that retirement accounts including IRAs are exempt in some instances. Notably, §16.7.20 provides that individually-owned retirement funds of the MA applicant/recipient, such as IRAs, should be counted as available assets because the person always has access to the principal in the accounts. However, IRAs belonging to a community spouse are disregarded.

The question then is whether the annuity owned by petitioner's husband is a simple annuity or a retirement account. ALJ Nancy Gagnon addressed the issue in fair hearing case no. MRA/135337 in a decision dated February 10, 2012 (the decision forwarded to me by [REDACTED]). She held that an annuity that appears to be identical to the one owned by petitioner's husband should be considered to exempt. As here, the annuity is a Jackson National Life account labeled "Individual Retirement Annuity," and it was purchased with funds from a prior retirement account. I find no flaws with her reasoning. The annuity here was not created using available assets; it was simply rolled over from an IRA into a different type of retirement account. Furthermore, ALJ Gagnon's decision was issued as proposed; it was adopted as the final order of the Department by Deputy Secretary Rhoades on March 20, 2012.

I conclude that the Jackson National Life Individual Retirement Annuity owned by petitioner's husband is an exempt retirement asset with regard to petitioner's MA eligibility.

### **CONCLUSIONS OF LAW**

The Individual Retirement Annuity owned by petitioner's community spouse husband is an exempt retirement account for purposes of petitioner's application for nursing home MA.

**THEREFORE, it is**

### **ORDERED**

That the matter be remanded to the county with instructions to disregard the Jackson National Life Individual Retirement Annuity as an available asset in petitioner's MA application. The county shall take the action within 10 days of this decision.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 13th day of January, 2017

\s \_\_\_\_\_  
Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 13, 2017.

La Crosse County Department of Human Services  
Division of Health Care Access and Accountability  
Attorney [REDACTED]